

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

DAREX ANTONIO CHESTER

PETITIONER

VS.

CAUSE ACTION NO.: 5:18-CV-36-DCB-FKB

PELICIA HALL, Commissioner of MDOC

RESPONDENT

ORDER

Before the Court is Petitioner Darex Antonio Chester ("Chester")'s Application for Certificate of Appealability (Doc. 30). For reasons below, this motion is DENIED.

Chester filed a previous Certificate of Appealability (Doc. 25), which this court denied (Doc. 26) due to Chester's federal habeas petition being untimely filed pursuant to 28 U.S.C. §2244(d). A Certificate of Appealability ("COA") should issue if a petitioner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of denial of a constitutional right, and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling. Slack v. McDaniel, 529, U.S. 473 (2000). The Court denied Chester's COA because there was a plain procedural bar that disposed of the case and a reasonable jurist could not conclude that the petitioner should be allowed to proceed

further. See United States v. Jones, 287 F.3d 325 (5th Cir. 2002). In addition, this Court did not find that Chester met the "extraordinary circumstances" or presented sufficiently "rare and exceptional circumstances" to justify equitable tolling. Fisher v. Johnson, 174 F.3d 719, 713 (5th Cir. 1999). Therefore, Chester is barred from Appeal for failing to timely assert his habeas petition.

In his second Application for a COA, Chester alleges that "a Jurist of reason could differ about the standard of review applied by District court" as to the denial of Chester's Habeas Corpus Petition for being untimely. (Doc. 30). In cases of a federal habeas petition, the "application of the equitable tolling doctrine... rests within the sound discretion of the district court." Allen v. Outlaw, 2015 WL 4759268, *1 (S.D. Miss. 2015). Upon examining the district court pleadings, the record, and the COA application, this Court found that Chester did not satisfy the requirements for equitable tolling.

Accordingly,

IT IS FURTHER ORDERED that Darex Antonio Chester's Application for a Certificate of Appealability is DENIED.

SO ORDERED this the 15th day of August, 2019

/s/ David Bramlette
United States District Judge